IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 176 of 2007
(Old No. 1868 of 1988)

Raj Kumar S/o Vivek Prakash,
R/o Munnuganj, Distt. Dehradun.

.... Appellant

Versus

1. Kashi Ram Kathura S/o Charan Dass, R/o Bhuppur Badripur Paura Sahib, Distt. Himanchal Pradesh
2. The State

... Respondents

Dated: August 13, 2007

HON. DHARAM VEER, J.

None has appeared on behalf of the appellant to argue the appeal, however the service is reported to be sufficient upon the appellant.

2. This appeal has been preferred against the judgment and order dated 26.04.1988 passed by Judicial Magistrate-I, Dehradun in Case No. 1601 of 1986, Raj Kumar Vs. Kashi Ram Kathuria, under Section 500 of the Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*), whereby the respondent No. 1 had been acquitted for the charge punishable u/s 500 of IPC.

3. Briefly stated, facts of the care are that Respondent No.1 had filed a FIR against the appellant on 31.1.1983 in P.S. Paunta Sahib, Himachal Pradesh. On the basis of said report, a case u/s 379/420 of IPC was registered against the appellant and his father and thereafter, the Truck of the appellant was taken into custody by the concerning police station. It was also alleged that respondent No.1 had lodged the FIR in order to cause

defamation to the appellant and the loss of defamation was also caused to the appellant. The respondent no.1-Kashi Ram was also summoned by the learned trial court in order to face trial. On the date fixed before the trial court, the respondent No.1 was present and appellant was not present and an application was given by the appellant that due to the accident of his vehicle, he was unable to come to the court. The trial court observed that on earlier various dates, the appellant used to get absent from the court and continued to send applications for his exemption. Accordingly, the learned trial court reached to the conclusion that the application given by the appellant that his vehicle had met with an accident, was false and baseless and since the trial was continuing since 1984, hence the learned trial court vide its judgment and order dated 26.4.1988 acquitted the respondent No.1 Kashi Ram for an offence punishable u/s 500 of IPC and accordingly cancelled his bail bonds. Against the said judgment and order dated 26.4.1988, the appellant-Raj Kumar has filed the present appeal before this Court.

4. Service is reported to be sufficient on the appellant however no one has appeared to argue the case. Sri Nandan Arya, learned AGA for the State is present. I have perused the judgment and order dated 26.4.1988 passed by the Judicial Magistrate-I, Dehradun.

5. The present appeal has been transferred under Section 35(2) of U.P. Reorganization Act, 2000 and after the transfer of the appeal, the record of the case was summoned. In compliance of that order, Incharge Officer, Criminal Record Room/ II Additional Civil Judge (S.D.) Dehradun has informed on 27.6.2007 that the record of the

case has been weeded out in August, 2005 as per rules. Learned A.G.A. for the State stated that after passing of the order dated 26.04.1988 which is under challenge, now the period of 19 years has been expired and now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

6. Even otherwise, after perusing the judgment passed by learned JM-I, Dehradun, I do not find any illegality or irregularity in the impugned judgment and order dated 26.04.1988 passed by learned Judicial Magistrate-I, Dehradun.

7. In view of the above, the appeal is dismissed accordingly.

(Dharam Veer, J.)

August 13, 2007
Rajeev Dang